



UNIVERSITY OF BALTIMORE SCHOOL OF LAW

*Charles Tiefer*  
*Professor of Law*  
CTIEFER@ubalt.edu

*3904 Woodbine Street*  
*Chevy Chase, MD 20815*  
*Tel: (301) 951-4239*

TESTIMONY BEFORE  
HOUSE HOMELAND SECURITY SUBCOMMITTEE  
ON MANAGEMENT, INTEGRATION AND OVERSIGHT

Hearing on  
Human Capital Issues and Security Procedures  
At the Department of Homeland Security  
May 18, 2006

by Professor Charles Tiefer

CONTINUING ON WITH MaxHR  
WOULD FURTHER SET BACK  
THE CHALLENGE OF PULLING DHS TOGETHER

Thank you for the opportunity to testify on the subject of the human capital issues in the Department of Homeland Security (DHS). I am Professor of Law at the University of Baltimore Law School since 1995, and the author of a number of pertinent law review and journal studies, and book sections, on federal personnel and procurement policy.<sup>1</sup>

- I. Executive Summary
- II. MaxHR Will Set Back DHS Integration
- III. Hiring and Training at DHS, Especially As to DHS's Troubled Procurement, Could Use the Attention and Funding Overly Diverted to MaxHR.

---

<sup>1</sup> These include sections of GOVERNMENT CONTRACT LAW: CASES AND MATERIALS (Carolina Academic Press 2d edition 2004)(co-authored with William A. Shook). In 1984-1995 I was Solicitor and General Counsel (Acting) of the U.S. House of Representatives, and participated in numerous oversight investigations of federal personnel and procurement policy.

## I. Executive Summary

DHS faces a central daunting challenge of “integrating” itself – pulling itself together from many units – in just a few years. DHS is the largest department to come together since the Department of Defense in the late 1940s, and it consists of almost a dozen principal units of different natures originating in many different departments. Recent developments have made increasingly clear how seriously it sets DHS back in this goal of integrating itself, to saddle DHS also with the problem of creating a wholly new personnel system, MaxHR, based on pay-for-performance, from scratch.

For this testimony, I have reviewed a number of studies of DHS by the DHS Inspector General, the General Accounting Office, and outside observers, as well as the scholarly studies of pay-for-performance implementation. These show that MaxHR and DHS have recently shown many problematic aspects which mean that implementing MaxHR has been, and will be, particularly setting back the task of integrating DHS. First, MaxHR throws away one of the few aspects that all the diverse precursor units of DHS have in common: all those units, to the extent relevant, were hitherto under the same government-wide personnel system, the “General Schedule” (GS) for the civil service.<sup>2</sup> By continuing on with MaxHR, DHS throws away that one unifying constant, and obliges its employees to set off on a bewildering and insecure personnel policy venture. Second, MaxHR tries to launch pay-for-performance in a situation missing many of the elements needed to have any chance for even minimal success, like a period of mission stability to carefully develop performance criteria, and to work them out between managers and employees so as to damp down the employees’ very natural concerns about the dangers of arbitrary and even punitive pay changes.

Third, MaxHR draws away precisely those resources – the vital but limited attention and funding that DHS managers can devote to personnel matters – that DHS desperately needs to use, not to redo the existing pay system, which is not a particular priority, but to fill serious shortfalls in training and hiring, which should have the highest priority. Fourth, the increasingly delays as the courts throw out some flatly illegal aspects of MaxHR mean it has become an even more long-lasting source of uncertainty and morale damage in DHS than ever imagined.

These problems and drains by MaxHR fall upon a department experiencing many other problems, doubling the downsides. For example, DHS, particularly in certain of its most critical subunits, is suffering a major problem with management vacancies. Take a look at the FEMA organization chart and count the boxes essentially vacant and just occupied by acting figures, from the (Acting) FEMA Director himself not yet confirmed by the Senate, and his empty chief of staff post, to the acting directors of the recovery and response divisions and five of the ten regions. Who can afford attention and funding to reinvent the pay system in a department when there are so many vital posts that do not even have anyone with more than “acting” status occupying them?

---

<sup>2</sup> A good review of how the General Schedule works is in Major John P. Stimson, *Unscrambling Federal Merit Protection*, 150 Mil. L. Rev. 165 (1995).

To address DHS's situation concretely, I have chosen to use the big-money subject of DHS's procurement, and how it has fallen prey to dysfunctional management and workforce problems, to illustrate how little DHS can afford to squander its limited personnel policy resources on MaxHR and how much it should focus instead on the urgent needs of hiring and training. A number of studies and investigations of DHS's procurement have shown the prevalence of those urgent needs: shortages of personnel, inadequacies of training, weak project management, and a feeble Central Procurement Office. The procurement problems particularly show up from reviewing some particular examples: FEMA's having had to abdicate procurement, partially, after Katrina; the fiasco of e-Merge2, the department's computerized finance system, as to which the contractor was recently discontinued; excessive contracts with Alaska Native Corporations, which reflect at best a slack attitude toward competition, if not a thinly-disguised effort at sole-sourcing; and the delay and schedule overruns with ACE, Customs' \$3.3 billion long-overdue IT system. These all reflect a department struggling, with a lot of failures, to do its own competitive procurement. What DHS procurement shows is that if ever a new and struggling department could ill afford to squander the attention and funding on an ideological venture like MaxHR that ought to be going to hiring and training in needy areas like procurement, DHS now is that department.

## II. MaxHR Will Set Back DHS Integration

### A. Deployment of MaxHR Will Do the Opposite of Its Main Claim: Far From Helping to Unify a Diverse Department, It Will Fragment One of DHS's Existing Unities

The proponents of MaxHR argue that it will help unify a diverse department. By making its nine occupational clusters, such as technical or law enforcement, the unit of pay-banded personnel treatment, MaxHR is supposed to "build a unified DHS culture," as the DHS Chief Human Capital Officer puts it.

There was always less to this claim than meets the eye. Before units came from different departments into DHS, there were many disparate aspects of their culture and nature. But, they had an existing unity by their civil service being classified on the government-wide General Schedule. To be specific: units such as what is now Customs and Border Protection, and what is now Immigration and Customs Enforcement, were created by merging elements of the Justice Department and the Treasury Department. These elements certainly had many dissimilarities. But, their managers and employees shared the common understanding of how the General Schedule worked, what it meant for their prospects for pay increase and promotion, and how to compare status when put together on assignments. In other words, a GS-12 from one unit might have many challenges figuring out how to work with a GS-13 from another unit, but at least they each understood relatively well where the other fit in the personnel system, and what it would take for the GS-12 to ascend in pay to be in line with the GS-13. MaxHR does not create unity and integration, it fractures one of DHS's existing unities. The predictability and structure of the existing personnel systems, which could translate via the GS's universal language, will now yield to a babble of uncertainty and confusion both within and between units.

Now, however, the plan for deployment of MaxHR prepared by the DHS CHCO shows that MaxHR will not even replace the existing unity of the General Schedule with a new unity, but only with disunited pieces. Of 185,000 DHS employees (when the department was formed), MaxHR will only apply to about 84,000.<sup>3</sup> It will not apply to the TSA screeners; some staff at FEMA; the Secret Service's uniformed division; or the Coast Guard's military personnel. Moreover, it will not apply to the SES employees, who have an existing system separate from the General Schedule. So, MaxHR will "unify" less than half of DHS. That is more fragmenting than unifying.

For those provisions involved in the pending litigation, the disunity is even greater. Most observers assume that Judge Collyer's ruling, which I found fairly straightforward as statutory interpretation, will be largely affirmed on appeal. In that event, the rollout of MaxHR's aspects related to labor bargaining, and adverse actions and appeals, will be limited. The Phase I rollout of MaxHR in 2006-2008 to HQ, FLET, ICE, and USCG will extend those limited aspects (the ones struck down by Judge Collyer) only to 15,000, with the aspects that apply more generally including pay-banding, extending to 25,000. The Phase II rollout of MaxHR in 2007-2009 to CBP, CIS, FEMA, and USSS will extend those limited aspects (again, the ones struck down by Judge Collyer) only to 20,000, with all aspects, including pay-banding, extending to 59,000 – for a total over the two phases, as to the more generally applying aspects, including pay-banding, of 84,000. Thus, of the less than half of DHS which will have MaxHR, only a fraction will have the aspects challenged in the litigation; and all this will be coming in different ways to different units at different times. MaxHR is an engine for disunity.

#### B. DHS Increasingly Shows Itself the Worst Place to Experiment with Pay-for-Performance on a Large, Unheralded Scale

The policy studies on pay-for-performance show many reasons for caution, and many specific conditions needed for it to succeed, while DHS increasingly shows itself the worst place to experiment with meeting those conditions. A comprehensive review of the literature was done in 2003 at the Kennedy School of Government at Harvard by two leading professors.<sup>4</sup> The Kennedy School review concluded that the "conditions" for "[p]ay for performance" to be effective "are often not met in the public sector, in part because of the complexity of the typical government product . . . the increasing role of . . . cross-agency collaboration, and the social comparisons and internal motivational dynamics of . . . public employees in particular."<sup>5</sup> What could provide more ground for doubting the conditions for pay for performance to be effective will be met, than the conditions today at DHS? DHS has an immensely complex product to produce – not goods or even simple services, but the complex balance of multiple missions of, say, a customs inspector (who will now have immigration duties too) or a Secret Service

---

<sup>3</sup> From DHS, "Overview of the MaxHR Human Capital Program" (May 2006).

<sup>4</sup> Iris Bohnet & Susan C. Eaton, *Does Performance Pay Perform? Conditions for Success in the Public Sector*, in John D. Donahue and Joseph S. Nye Jr., eds., *For the People: Can We Fix Public Service?* (2003).

<sup>5</sup> *Id.* at 250.

officer. Cross-agency collaboration is a basic part of the work of many in DHS. And, the motivational dynamics at DHS depend heavily, not upon a pure piecework-minded interest in wages, but upon precisely the “public service motivation” as to which the Kennedy School review said “the reduction of intrinsic motivation through performance-based pay will be a correspondingly bigger problem.”<sup>6</sup> DHS is the poster-child example of the place *not* to launch a sweeping experiment with pay-for-performance.

Let us look at just how DHS plans to implement MaxHR. DHS holds out no promise that it will obtain large appropriated sums to provide MaxHR performance bonuses, and also offers no protection against denials of bonuses or even individual pay cuts. Moreover, DHS units include a fair fraction of relatively senior personnel who are already at the upper end of their civil service pay. This gives little reason for DHS’s vital experienced echelons to think that pay scale conversion to MaxHR will precede pay raises. If anything, MaxHR could well generate an exodus from DHS of such experienced employees. That exodus might be the kind of development welcomed in the private sector, where offloading experienced employees from denial of pay raises, and even pay cuts, can raise profit margins by cutting payrolls and replacing senior better-paid employees with junior low-pay ones. However, I seriously doubt whether America will feel safer if MaxHR has that same effect, i.e., less and less experience, and more and more turnover, in its customs and immigration inspectors or in those backing up its Coast Guard or handling emergencies at FEMA.

The current implementation process for MaxHR is particularly worrisome because it is so divorced from employees. DHS has been devoting about \$30 million/year to the contract with Northrop Grumman and others to devise the system, an amount cut back from what it requests from appropriators – leaving little reason to think it will have large amounts in hand left over for bonuses. Incidentally, this particular contract was set up as a BPA, a very open-ended basis which means it may well siphon off an increasing share of the funds needed to try to reduce MaxHR’s intrinsic unattractive risks for DHS employees. Northrop Grumman is, of course, one of the Big 3 defense contractors. It has been trying to parlay its experience just as a producer of hardware like airplanes for federal defense into handling other matters as well. So it does not bring any long history of experience, or a rich network of contacts, with the personnel systems of Immigration and Customs Enforcement, or Customs and Border Protection, or FEMA.

The Kennedy School review found that “[e]mployees feel losses with disproportionate intensity,” just as they feel about comparisons with peers whose pay rises while theirs does not. There is a grave risk in public organizations that “performance can be negatively affected if the process through which the outcomes are achieved is perceived as unfair.”<sup>7</sup> Two press reports just this week highlight this problem in trying to have pay-for-performance for federal agencies. The new pay-for-performance system at GAO received adverse comment, because of the negative evaluations: “25-year GAO veterans feel insulted and unappreciated by a ranking system that implies that half of the analysis in his cohort are performing below a satisfactory

---

<sup>6</sup> *Id.* at 246.

<sup>7</sup> *Id.* at 248.

level despite receiving good performance evaluations.”<sup>8</sup> At the Department of Defense, according to a report in the Washington Post’s *Federal Diary* column, the pay conversion tables have created a “tricky” problem about “the perception of equity in the workplace” because it limits some converted GS-14s (supervisors) to \$106K while other converted GS-14s (technical experts) may earn close to \$125K.<sup>9</sup> In sum, the Kennedy School review was on solid ground in foreshadowing that the shift to pay-for-performance being devised by Northrop Grumman may do more harm than good to DHS employee morale and performance.

### III. Hiring and Training at DHS, Especially As to DHS’s Troubled Procurement, Could Use the Attention and Funding Overly Diverted to MaxHR.

#### A. Training, Hiring, and Other Personnel Needs as to DHS Procurement Compete with MaxHR

The real cost of MaxHR to DHS can only be appreciated from seeing DHS’s other, more pressing needs for the scarce attention and funding for personnel matters spent on changing the pay system. Let us start with the training shortage. DHS did accomplish the making of a human capital strategic plan, in October 2004, and a departmental training plan, in July 2005.<sup>10</sup> However, this dealt largely in generalities: as a GAO evaluation found, “The DHS training strategic plan contains few specific performance measures for its goals or strategies and all of these are output measures.”<sup>11</sup>

Meanwhile, a tour through DHS turns up many training or hiring shortfalls:

--A 2005 report by the DHS Inspector General said the Transport Security Administration must improve its training for airport screeners.<sup>12</sup> A TSA training program for screeners was handicapped, a GAO study found, by insufficient staffing at many airports coupled with a lack of high-speed Internet availability.<sup>13</sup>

--The GAO found bomb-making materials could be sneaked thru all 21 airports tested, suggesting screeners were not receiving the right kind of training (or equipment).<sup>14</sup>

--A report in December 2005 report by the DHS Inspector General on DHS’s major management challenges found that DHS had “a shortage of certified program managers to manage the Department’s 110 major programs.”<sup>15</sup>

---

<sup>8</sup> Florence Olsen, “Ticked Off” About Pay at GAO, *Federal Computer Week*, May 15, 2006.

<sup>9</sup> Stephen Barr, *Pentagon Workers Able to Get a Boost Under New Pay Tables*, *Wash. Post*, May 11, 2006.

<sup>10</sup> Department of Homeland Security Learning and Development Strategic Plan.

<sup>11</sup> General Accounting Office, *Department of Homeland Security: Strategic Management of Training Important for Successful Transformation* (Sept. 2005).

<sup>12</sup> *Airport Screeners Need to Be Empowered, Not Privatized*, *Government Employee Union Says*, 47 *Gov’t Cont.* 243 (May 25, 2005).

<sup>13</sup> GAO, *Aviation Security: Screener Training and Performance Measurement Strengthened, but More Work Remains* (May 2005).

<sup>14</sup> The GAO report was classified. It was first aired on NBC Nightly News on March 16, 2006, followed by a number of print press discussions. See <http://www.msnbc.msn.com/id/11878391/>; *Critics: Mismanagement to Blame for TSA Lapses*, *Federal Times*, March 27, 2006, at 8.

<sup>15</sup> DHS OIG, *Major Management Challenges Facing the Department of Homeland Security* (Dec. 2005), at 112.

--Studies by the GAO, the DHS IG, Congressional committees,<sup>16</sup> and the press<sup>17</sup> all found striking training deficiencies underlying FEMA's flawed response to Hurricane Katrina. Notably, an April 2006 comprehensive IG study found a steep decline in FEMA top-level training: "Overall, FEMA enrollments in professional developed courses, which include leadership and managerial training, decreased significantly in the past ten years. For example, in 2005 only 25 percent of its employees were enrolled in such programs when compared to 1995 levels."<sup>18</sup>

Procurement is a legitimate focus for looking at personnel problems at DHS, considering the scale of DHS's procurement activity – DHS purchased almost \$9.8 billion of goods and services in fiscal year 2004, in almost 60,000 procurement actions (not including credit card buys).<sup>19</sup> The DHS IG found: "DHS's close relationship with the private sector resulting from its many partnership arrangements, raises concerns that the minimal initial and annual Government ethics training may be insufficient to address standards of conduct issues as they apply to procurement."<sup>20</sup>

A well-known former senior procurement figure of the current Administration, Angela Styles (formerly administrator of the Office of Federal Procurement Policy), told of an experience as to how weak DHS training was leading to weak DHS ethics:

Styles recounted her experience with an employee from a large IT firm who, while meeting to discuss the company's bid for a Department of Homeland Security contract, mentioned casually that he had drafted the DHS statement of work. "Everybody in the room except this person was shocked," Styles said. "They knew it was a problem for the same company to draft the statement of work and bid on the contract." . . . . DHS needed the contractor to draft its statement of work, according to Styles, because no federal employee was capable of drawing specifications for the particular IT project.<sup>21</sup>

Some may question whether to view MaxHR as truly competing with hiring and training for scarce personnel resources at DHS. Unfortunately, there is no other way to view the radical step of replacing the existing personnel system with a new one, particularly a new one that is intensely draining, both permanently and especially in its initial years, of supervisors' attention. MaxHR requires both supervisors and employees to be quite re-trained, the supervisors in how to rate and to communicate with employees

---

<sup>16</sup> Aimee Curl, *Senate Panel Unlikely to Recommend Taking FEMA Out of DHS*, Federal Times, March 13, 2006, at 9 (discussing testimony at Senate hearing about the need for better FEMA training); Stephen Losey, *FEMA Ignored '04 Memo, Lost Ground in Katrina Response*, Federal Times (Dec. 12, 2005), at 4 (discussing testimony that a FEMA coordinating officers had circulated a June 2004 memo that "raised concerns that FEMA's national emergency response teams were unprepared and ill-trained").

<sup>17</sup> Mollie Ziegler, *Federal Volunteers Cite Flaws in Katrina Effort*, Federal Times, Jan. 30, 2006, at 1 (about faulty training given to volunteers from DHS and from other agencies to help after Katrina).

<sup>18</sup> DHS OIG, *A Performance Review of FEMA's Disaster Management Activities in Response to Hurricane Katrina* 122 (March 2006).

<sup>19</sup> DHS OIG, *Department of Homeland Security's Procurement and Program Management Operations* (Sept. 2005), at 2, 20.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Developments: Rules on Blended Workforce Lack Clarity, Acquisition Experts Say*, 42 Gov't Cont. para. 473 (Nov. 9, 2005).

so that the pay-controlling performance ratings will generate the least friction, the employees so that they will accommodate themselves to the strange new system.

Moreover, as it goes into effect, MaxHR requires supervisors to give high levels of attention to the kind of rating and communication required for pay decisions. In fact, an article this week noted that supervisors at the Defense Department thought they should get a pay raise just for the increased amount of such supervisory work the new system demanded. Supervisors and employees alike have just so many hours in the week for training and personnel matters apart from their regular work. They can either spend them training and dealing with MaxHR, or, they could spend them on training and hiring for such needs as screeners' need for more security training on bomb-making materials, FEMA officials' needs for more training on emergency handling, or contract managers' need for more training on competitive and ethically honest procurement.

## B. Dysfunctional Procurement

A few concrete examples will show the kinds of dysfunctional procurement at DHS resulting from its deficit of hiring and training.

Quite a number of hearings have already been held just on the procurement problems in FEMA's response to Hurricane Katrina. In the week after the hurricane, FEMA awarded a series of large no-bid contracts (on the order of \$100 million) to companies with political connections. Thereafter, FEMA began shifting the burden of a sizable amount of its contracting to Defense Department personnel, in two respects. It immediately turned \$1.5 billion in contracting over to the Army Corps of Engineers,<sup>22</sup> ostensibly involving engineering, although it also turned out to involve basic commodities and even portable classrooms.<sup>23</sup> And, the Army Corps tapped into contracts of other military services.<sup>24</sup> Second, the Defense Department assigned some contract management support staff to FEMA.<sup>25</sup> FEMA simply could not do its procurement job; it had to turn its job over to the Defense Department.

Some might excuse that as just a super-emergency situation, not representing a DHS problem with broader implications. However, the indications in the studies by the DHS Inspector General of the procurement personnel problem are that this problem is hardly isolated. For its September 2005 study of procurement operations, the DHS IG compared levels of procurement staffing among the different units of DHS, and between DHS and other departments. It found average procurement spending per employee ratios, according to two outside studies, of \$5.3 million (one study), or alternatively \$6.3 million to \$8.8 million (another study), in other federal agencies with similar buying profiles. "DHS' average spending per procurement employee of \$12 - \$13 million is significantly

---

<sup>22</sup> Leslie Wayne, *Expedited Contracts for Cleanup Are Testing Regulations*, New York Times (Sept. 13, 1005), at C4.

<sup>23</sup> Kevin McCoy, *Contract for Portable Classrooms Scrutinized*, USA Today (Oct. 21, 2005), at 6b (contract review requested of GAO for \$39.5 million no-bid Katrina contract; Army Corps passed up local contractors willing to supply the classrooms for half the price, in favor of Alaska Native Company).

<sup>24</sup> Renae Merle, *4 Firms Hired to Clear Debris in Gulf Coast*, Wash. Post (Sept 16, 2005), at A20.

<sup>25</sup> Chris Gosier, *OMB Eyes Hurricane Relief Contracts*, Federal Times (Oct. 17, 2005), at 4.



higher than either of these studies with some DHS offices spending an average of \$25 - 30 million per person.”<sup>26</sup> That is an alarmingly thin level of DHS procurement personnel.

The DHS IG confirmed the disturbing implications of this inadequate level of DHS procurement personnel from what he had been repeatedly told by the procurement personnel themselves. “Many procurement offices have reported that their lack of staffing prevents proper procurement planning and severely limits their ability to monitor contractor performance and conduct effective contract administration.”<sup>27</sup>

Adding to the dangers of DHS’s inadequate procurement workforce is DHS’s inadequate Office of Chief Procurement Officer (OCPO). The subheading of the September 2005 DHS report on this subject says it all: “OCPO Lacks Sufficient Staff and Authority to Conduct Effective Oversight.”<sup>28</sup> At one recent time, the GAO found that OCPO had only two people to conduct oversight on the eight separate procurement offices in DHS. It was supposed to obtain five more, but even if that occurs, both GAO and IG found that OCPO “has unclear authority to ensure compliance with DHS procurement policies and procedures.”<sup>29</sup> So, the move to MaxHR means DHS management must devote its precious capacity to exert central leadership to changing the department’s personnel/pay system, instead of trying to get oversight over a set of overwhelmed very-high-risk non-centrally-supervised procurement offices handling large sums of money.

### C. Examples of Procurement Workforce Problems, Outside FEMA eMerge2

A detailed press article this year entitled “*Security for Sale*,” had the subheading: “The Department of Homeland Security has a Section on Its Web Site Labeled ‘Open for Business.’ It Certainly Is.”<sup>30</sup> The article assembled many examples, some well-known within the procurement community, of contractor exploitation, often facilitated by lobbyists, of lax standards at DHS. Its examples draw on, and mesh with, the previously-quoted studies by the DHS IG, GAO, and Congressional Committees. For example, earlier a recent IG report was quoted about the inadequate controls and personnel in DHS’s central procurement office. *Security for Sale* quotes Clark Kent Ervin, who served as DHS inspector general until the end of 2004 as follows:

The controls recommended by Ervin included hiring more procurement staff with deeper experience. The DHS procurement office, he said, had “so few people expert in contract procurement, the private sector was able to take the department for a ride.” Referring specifically to contracting abuses at TSA, Ervin added that there was a “loose attitude regarding money.”<sup>31</sup>

---

<sup>26</sup> DHS OIG, *Department of Homeland Security’s Procurement and Program Management Operations* (Sept. 2005), at 7.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 8.

<sup>30</sup> By Sarah Posner, in *The American Prospect* (Jan. 2006).

<sup>31</sup> *Id.*

*Security for Sale* develops usefully one particular example about which this Committee has recently held important hearings. It describes how the company BearingPoint, formerly known as KPMG Consulting, obtained the eMerge2 contract. “In 2004, after signing on with Blank Rome, the company won three major DHS deals: a \$229 million contract for its ‘eMerge2’ software, designed to integrate the financial management of the department’s 22 component agencies [and 2 other contracts].”<sup>32</sup> Blank Rome was a Philadelphia lawyer-lobbyist firm extremely well connected to the DHS Secretary, Tom Ridge of Pennsylvania.<sup>33</sup>

There was reason from the beginning to be skeptical of the BearingPoint contract. At the very moment that DHS awarded the eMerge2 contract to BearingPoint, another federal agency, the Department of Veterans Affairs, was canceling a computer systems integration contract with BearingPoint for a Florida VA medical center after paying BearingPoint \$117 million, and the State of Florida was canceling a similar \$173 million with BearingPoint and Accenture.<sup>34</sup> More broadly, the technical procurement world grouped BearingPoint’s eMerge2, as an enterprise resource project (ERP), as one of the “well-known ERP implosions” as to which “the history of failed ERP projects [are] dotting the federal landscape.”<sup>35</sup>

It seems rather blithe for DHS just to walk away from that failure without asking some hard questions of BearingPoint and of its own project workforce. DHS has a painful history of material weaknesses in its component financial statements and financial management systems precisely in the context that the BearingPoint contract was to fix, as GAO reported to this Committee at its March 29, 2006 hearing.<sup>36</sup> DHS depended on that contract for a solution, having chosen the BearingPoint proposal over a rival proposal by established solution-provider IBM – and over simply implementing the internal solution of the Coast Guard’s much-praised system. It seems BearingPoint’s failure was apparent “within weeks,”<sup>37</sup> yet DHS, having stayed several years with BearingPoint, now finds itself having lost years in this key effort. The failure points up the need for more of its personnel efforts to be devoted to hiring and training so that it can make wise procurements and then manage them effectively, rather than devoting its personnel attention and funding to MaxHR.

### Alaska Native Corporations

There has been an emerging problem – some would call it a scandal – in several government departments, as the exception to competitive bidding for Alaska Native Corporations (ANCs), some of which would not be considered true “small” businesses, is overused as a loophole for these departments to make noncompetitive, even sole-source awards. Unfortunately, there are signs that the DHS procurement workforce, with its shortfalls in staffing and training and with some evident vulnerability to political and

---

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Paul de la Garza, *Critics Question Federal Contract*, St. Petersburg Times, Oct. 7, 2004

<sup>35</sup> Wilson P. Dizard III & Mary Mosquera, *ERP’s Learning Curve*, TechNews (Feb. 16, 2006).

<sup>36</sup> Statement of McCoy Williams Before the Jt. Hearing of the Subcomm. On Government Management, Finance and Accountability of the House Government Reform Comm. and the Subcom. On Management, Integration, and Oversight of the House Homeland Security Comm. (March 29, 2006).

<sup>37</sup> U.P.I., *DHS Financial Management Plan Collapses* (April 3, 2006).

lobbying pressure, has been yielding to the temptation to make excessive use of the ANC loophole in competition.

Examples include a \$500 million Customs Service contract awarded to Chenaga Technological Services Corp., for maintenance of scanning machines at ports and borders;<sup>38</sup> and the \$39.5 million no-bid post-Katrina contract for portable classrooms by Akima Site Operations (technically arranged by the Army Corps, because FEMA abdicated).<sup>39</sup>

Interestingly, the GAO recently reported on a particular example, a sole-source award by the immigration service to an ANC for operation and maintenance of a detention facility. Apparently, “the contracting officer [said] that awarding to an ANC firm was the quickest and easiest method and avoided competition.”<sup>40</sup> That comment speaks volumes about the workforce problems underlying the procurement problem.

### TSA-Unisys

Another recently completed audit concerns the Transportation Security Administration (TSA)’s billion-dollar airport telecommunications contract with Unisys Corp. This was the vital contract to rollout an infrastructure so TSA could operate at headquarters and airports nationwide. Unisys’ performance was so disappointing that the IG recommended, and TSA agreed, to terminate the contract at the end of the base period and re-bid it.<sup>41</sup> The IG reported that “TSA officials said that they originally estimated that the contract could exceed \$3-5 billion, but set the contract ceiling at \$1 billion.” The contractor ran through 83% of the contract ceiling (\$834 million) in less than half the allotted time, and failed to provide TSA with many of the critical deliverables. The shortfalls in procurement officer capacity to oversee the contract are only too clear.

### ACE

Customs and Border Protection (CBP) has a program to modernize trade processing for border security called Automated Commercial Environment (ACE), with a lifecycle estimate of \$3.3 billion, and which had received almost \$1.7 billion by March 2006. ACE has a history of cost and schedule overruns, with GAO examinations in past years identifying the likelihood that the program would continue to fall short of expectations.<sup>42</sup> A recent GAO overview in March 2006 of DHS’s lagging IT showed the ACE problems persist due to weak DHS program oversight. To meet deadlines – ACE had just come out with its release #4 – increments (releases) that were supposed to be successive were being developed and deployed with what GAO called “significant concurrency” (i.e., more overlap in time than is advisable).

GAO explained the risks with both this “concurrency” and the problem that “the ACE program was passing key milestones with known severe system defects—that is,

---

<sup>38</sup> *Investigation of Alaska Native Corporation Contracts Sought*, 47 Gov’t Cont. 114 (March 9, 2005).

<sup>39</sup> Kevin McCoy, *Contract for Portable Classrooms Scrutinized*, USA Today (Oct. 21, 2005), at 6B.

<sup>40</sup> GAO, *Contract Management: Increased Use of Alaska Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight* (April 2006), at 18.

<sup>41</sup> DHS OIG, *Transportation Security Administration’s Information Technology Managed Services Contract* (Feb. 2006), at 2.

<sup>42</sup> GAO, *Information Technology: Customs Automated Commercial Environment Program Progressing, but Need for Management Improvements Continues* (March 14 2005).

allowing development to proceed to the next stage even though significant problems remained to be solved.” Both of these lead to “schedule delays and cost overruns,” “premature deployment,” and “a groundswell of user complaints and poor user satisfaction scores with the release.”<sup>43</sup> That means that ACE will end up costing more billions, and taking more years, than planned for. A trade association once made the comment about ACE: “Is it ever going to get done? It’s beginning to look like the Big Dig in Boston.”<sup>44</sup> Now it appears that while it may get done, the shortfalls in procurement oversight will lead to overruns, delays, and customer dissatisfaction.

---

<sup>43</sup> GAO, *Homeland Security: Progress Continues, but Challenges Remain on Department’s Management of Information Technology* (March 2006).

<sup>44</sup> R. G. Edmonson, *Slow Going: Funding and post-Sept. 11 Security Features Slow Completion of Customs Computer System*, J. of Commerce, June 28, 2004, at 12 (quoting official of Retail Industry Leaders Association, Jonathan Gold).